



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

At the outset of the hearing the RN indicated that there was an error in her name on the tenants' application. She stated that she was actually the power of attorney for the landlord in this matter, and that this was misspelled and included as her name on the application. As neither party was opposed, the landlord's name will remain the same on the application, but amended to reflect her proper name. RN will be referred to as the "POA" for the purposes of this hearing.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The POA confirmed receipt of the tenants' application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenants' application and evidence. The landlord did not submit any evidence for his hearing.

As the tenants confirmed receipt of the 2 Month Notice on January 28, 2018, I find that this document was duly served to the tenants in accordance with section 88 of the *Act*.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began in 2014. Monthly rent is set at \$1,030.00, payable on the first of the month.

The landlord issued the 2 Month Notice, with an effective move-out date of April 1, 2018 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The POA provided the following background for why they had decided to issue the 2 Month Notice. They testified that the POA named in this application is the daughter of the homeowner, who had passed away. As his daughter and power of attorney, the daughter and her husband manage the rental property. The named landlord on the tenancy agreement is the father. Neither party submitted a copy of this tenancy agreement for this hearing.

The POA testified that the 2 Month Notice was issued in compliance with section 49 of the Act as the individual moving in is the other daughter of the named landlord in the tenancy agreement.

The tenants testified that they did not believe that the landlord served this second 2 Month Notice in good faith as they were told the "sister in law" would be moving in, and not the daughter. The tenants also testified that they had disputed the notice in order to extend the time of their tenancy in order to find a new place to live.

The POA testified that her husband was the one who served the 2 Month Notice to the tenants, and did indicate "sister in law". The POA testified that the "sister in law" is her sister, and therefore the daughter of the landlord. She testified that the referenced individual is the same person, and that person plans on occupying the rental suite.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord states that her daughter intended to occupy the suite.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”

The tenants testified in this hearing that the “sister in law” does not qualify as a close family member by definition of section 49(1) the *Act*. As the tenants raised doubt as to the landlord’s true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

The landlord’s POA did not dispute the fact that the tenants were told that the “sister in law” was moving in, as her husband rightfully indicated, this person would be moving in, and is the daughter of the named landlord in the tenancy agreement.

I find that the landlord’s POA has met the burden of proof to demonstrate that a close family member would be moving in. I find that the “sister in law” referred to in this hearing is the daughter of the named, but deceased, landlord. On this basis, I dismiss the tenants’ application to cancel the 2 Month Notice.

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the 2 Month Notice complies with section 52 of the Act. As I have dismissed the tenants' application, the landlord will be given a formal Order of Possession which must be served on the tenants. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenants were not successful in their application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for this application. The tenants must bear the cost of this filing fee.

Conclusion

I dismiss the tenants' application without leave to reapply. I find that the landlord's 2 Month Notice is valid and effective as of April 1, 2018.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 7, 2018

Residential Tenancy Branch